

**TOWN COUNCIL
SPECIAL MEETING
APRIL 26, 2000**

The meeting was called to order at 6:04 p.m. Present were Mayor Venis, Vice-Mayor Weiner and Councilmembers Clark, Cox, and Paul. Also present were Assistant Town Administrator Rawls, Interim Town Attorney Monroe Kiar and Town Clerk Reinfeld recording the meeting.

1. Selection of Legal Counsel for eminent domain Proceedings to Acquire Certain Water Utility Facilities Necessary to Create Unified Delivery of Water Utility Services within the Town's Corporate Limits

Mayor Venis stated that Council would be interviewing law firms to select eminent domain attorneys to proceed with the acquisition of water utility facilities in regards to the City of Sunrise. He stated that there were four firms that would be interviewed, each firm would make a 10 minute presentation and Council would ask questions at the end of each presentation.

Councilmember Paul inquired if the firm that was hired would automatically move towards acquisition or would they be looking into the costs and how to proceed. Mr. Rawls commented that the direction as to how the firm would proceed would come from Council. He stated that from his recollection of the discussions, the first step would be to prepare a cost estimate of what the litigation effort would entail. Mr. Rawls then indicated that Council might want to take that further to get some grasp on what the actual acquisition would include, then policy decisions could be made as to how to move forward.

Vice-Mayor Weiner stated that during the discussion, Utilities Director Daniel Colabella was present when Councilmember Paul had made a similar inquiry. He indicated that he was restating his previous comments that the issue with eminent domain was whether or not it was a public necessity. Vice-Mayor Weiner stated that the cost being what it was, if the Town should be successful in the eminent domain proceedings and a jury placed an evaluation, Council would have to make a decision with regard to a referendum of the electorate as to whether the Town would provide funding. Vice-Mayor Weiner indicated that the funding was not relevant to one of the major initial determination that would surface as to whether or not eminent domain was a public necessity. He indicated that his understanding of the procedures was that research would have to be completed first because of the unique nature of the type of litigation, not only due to the specialty of eminent domain but city versus city. Vice-Mayor Weiner inquired as to (a) could this type of action be brought by one city against another city and (b) what did the litigation entail. He indicated that he was being vague because it was a public meeting and he wanted whichever firm was selected to do the research and report to Council as to how to proceed.

Councilmember Cox inquired if the firm that was hired would be responsible for making the determination as to the cost involved as well as the cost for new water plants with Vice-Mayor Weiner responding negatively. She further inquired if the firm's responsibility would only involve water lines. Mr. Rawls commented that as was pointed out by Vice-Mayor Weiner, there were a number of aspects to the trial that were very unique for an eminent domain case. He stated that legal counsel would be identifying those elements to determine on what aspects Council should proceed. Mr. Rawls indicated that in discussions with representatives of various law firms, they felt they could provide Council with some projection of its immediate investment in the litigation effort. He stated that that could be taken further whether through the litigation process or at the completion of the process, if the Town was successful to secure an evaluation of the system; that would be

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a part of the litigation. Mr. Rawls commented that through the litigation process, the overall value of the various elements would be arrived at. He stated that beginning this and realizing that there was a time frame, the first issue to tackle would be to determine the direction the litigation would go, the available options and have some type of indications what those litigation costs would be. Mr. Rawls indicated that looking at the first aspects of the litigation as commitment was made to move forward with the litigation, the cost estimates would be a part of the entire system acquisition.

Councilmember Cox stated that at the last Council meeting, July 1st was discussed as a deadline because of changes in the State law. She asked for an explanation as to the reason behind the rush to file the lawsuit prior to that date. Vice-Mayor Weiner stated that if the Town wanted to avoid going through the procedures outlined in Chapter 73.015, the litigation had to be filed prior to July 1st. He stated that if not filed prior to July 1st, there were other procedures that would have to be complied with assuming that the Town would be able to move forward with an eminent domain case. Vice-Mayor Weiner believed that the complexities of this type of case would have to be researched which would have to be done before a resolution could be adopted. He stated that it may be that other things would have to be accomplished and the Town might decide that there was no rush based on legal advice. Vice-Mayor Weiner stated that he had no preconceived notion to the requirements as this was a highly specialized area of the law.

Thomas Bolf, representing Ruden, McClosky, Smith, Schuster & Russell, stated that he was accompanied by Dale Bruschi who focused on condemnation in the firm's Fort Lauderdale. He indicated that the points that would distinguish his firm from the others was the fact that his firm had a public utility group in the Tallahassee area, and a former head of the Public Service Commission (PSC) was head of that department. Mr. Bolf stated that there was an advantage to having a representative in Tallahassee who could literally walk down the street and pick up information, someone who also had 35 years experience in public utility law. He indicated that it was invaluable to be able get feedback by phone rather than having to hire an expert. Mr. Bolf stated that another unique asset was that one of the firm's counsel, Sherman Katz, had owned and operated utility systems and was now a consultant to utility companies. He indicated that Mr. Katz owned and operated the Pine Island Utility Water System before it was sold to the City of Sunrise. Mr. Bolf commented that he anticipated that that would be one of the plants that the Town would investigate acquiring. Mr. Bolf explained that his firm had some experience in litigation with the City of Sunrise as Ruden, McClosky had sued the City of Sunrise for utilities on behalf of Mr. Katz and two other developers.

Mr. Bolf stated that his firm had compiled a tremendous amount of information regarding the utility system in the City of Sunrise as it applied to the Town. This information, he stated, was located in his office and could be retrieved quite easily in the event that his firm was fortunate to be selected. Mr. Bolf indicated that he assumed that his firm's land use and real estate expertise was known to most of the legal community and whenever there was an acquisition of this significance, having individuals such as Don McClosky and Dennis Mele to consult with was a great advantage when trying to determine the best way to proceed.

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Mr. Bolf stated that he has been an attorney for 15 years, was employed by Ruden, McClosky in 1984, and became a partner in 1990. He commented that for the last decade, he had focused on condemnation as the principal area of his practice, this he did throughout the State for numerous clients, such as Wal-Mart, Blockbuster and Goodyear. Mr. Bolf indicated that historically, he had represented property owners as opposed to government.

Mr. Bolf commented that Dale Bruschi who was now employed by his firm, was a former employee of the Broward County Attorney's Office and was the individual in charge of Broward County's condemnation before he joined Ruden, McClosky. He indicated that Mr. Bruschi brought to the firm the expertise which represented governmental sign, and had represented Palm Beach County on about 1.2 miles of right-of-way the firm had acquired for the County.

Mr. Bolf explained that in the Sarasota Office, there was a partner who was condemnation counsel for Hillsboro and Manatee counties. He commented that in the Tallahassee Office, there was the former Deputy General Counsel for the Florida Department of Transportation Margarie Kemper, who had been with the firm for years and had been a wealth of information on condemnation. Mr. Bolf indicated that also in the Tallahassee Office, was the former head of the Department of Community Affairs, and the General Counsel to the Department of Environmental Regulations. Having these individuals on board meant that his firm had a wealth of experience in governmental law and and utility law.

Mr. Bolf indicated that Council might already be aware of obstacles with which it would be confronted and it was not the best idea at the moment to go on record indicating the strengths and weaknesses of the case. He explained that in response to the questions regarding Chapter 73, the amendments became effective in July, most of which had to do with pre-suit negotiations and the obligations of the condemning authority to negotiate with the property owners and businesses being affected. Mr. Bolf commented that there was an issue under Chapter 164 of the need to negotiate before a suit could be filed against another governmental entity and it might not be possible to meet the July 1st deadline which meant that the Town would have to negotiate with the City of Sunrise. Mr. Bolf explained that this was an issue his firm would have to discuss with Council, however this was interesting and challenging case with a lot of fun issues from a condemnation standpoint and he hoped that his firm could be of assistance to Council. He commented that he did not believe there was any firm better able to assist the Town in litigating the utility issue with the City of Sunrise.

Mayor Venis inquired if Council had any questions, and inquired as to Mr. Bolf's hourly rate. Mr. Bolf responded that his hourly rate was \$250 and Mr. Bruschi's was \$200. He stated that he was not presently in a position to negotiate, but in representation of governmental entities, he had frequently been asked to negotiate his rates and had done so in the past. Mayor Venis commented that Mr. Bolf had referred to the fact that on three separate occasion his firm had been involved in litigation with the City of Sunrise, and he inquired as to the specifics. Mr. Bolf stated that in Mr. Katz's case, when Pine Island Utility was sold, the City of Sunrise was obligated to pay him over the years especially if the service expanded to other areas, and a large issue arose because the expansion took place. He stated that the City of Sunrise made the payments, then there had been a change in Sunrise's

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administration and the litigation was ultimately settled. Mr. Bolf stated that the other lawsuits were on behalf of developers in disputes with the City of Sunrise regarding utilities, but he was not aware of the specifics to be able to explain further.

Councilmember Clark commented that Mr. Bolf mentioned that he had negotiated lower rates with other cities and inquired as to the name of one of the cities. Mr. Bolf indicated that Palm Beach County was the most recent and this was for a 20% discount. Councilmember Cox commented that Ruden, McClosky obviously represented a great deal of clients who came through the Town and she inquired if there would be a conflict between his firm representing litigation against Sunrise and perhaps representing certain clients in an adversarial position against the Town. Mr. Bolf commented that he had indicated in his letter that his firm occasionally represented many developers in matters before the Town. He stated that he was aware that his firm would not be able to represent anyone in litigation against the Town but would still be able to process administrative items such as zoning and land use.

Councilmember Paul referred to the condemnation in Palm Beach County involving one and a half mile of roadway and inquired if his firm had been involved in any other projects in Palm Beach. Mr. Bolf responded in the negative and indicated that the project was in the initial stage.

Mark S. Ulmer indicated that he was a sole practitioner and was previously a managing partner and full partner with the firm Brigham, Moore, Gaylord, Wilson, Ulmer, Schuster & Sachs for ten years. He explained that he left that firm he liked to practice by himself and assumed the responsibility of the case, to have control of the case and know what was going on in all aspects of the case. If hired, Mr. Ulmer commented that he was the one Council would get; however, if Council hired someone else, it might not get whoever came to the microphone. He indicated that that he had worked with all the attorneys present and they were all fine attorneys; Council could not go wrong with whoever was hired.

Mr. Ulmer indicated that he was an "AV" rated attorney which was the highest rating by Martindale-Hubbell, Gibbs and he had no conflicts of interest with the Town except one case with the Florida Department of Transportation. He stated that he represented approximately 10 to 12 different property owners on the Griffin Road project and indicated that one of the cases was presently before the Florida Supreme Court which related to a tenant, Barbara's Creative Jewelry.

Mr. Ulmer commented that he was presently Mayor of Miami Shores in Dade County. He indicated that the only thing that he had undertaken during the past 17 years as an attorney, aside from practicing eminent domain law and inverse condemnation, was moonlighting as the City Attorney for Miami Shores on a part-time basis. Mr. Ulmer commented that he was unable to function in the manner that he would have liked as City Attorney and maintain his full-time law practice and his family life, so he had resigned as City Attorney after two years. He indicated that he became involved again when he was asked by residents to run for council, which he did and was elected mayor. Mr. Ulmer commented that from his experience as mayor, he was aware of some of the political issues and as a former city attorney, he was also aware of some of the municipal legal issues. He added that as an eminent domain specialist, he would be able to handle this eminent domain regardless of what it entailed. Mr. Ulmer commented that his practice had been

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primarily representing property owners and tenants, and approximately three years ago, he began representing government agencies. He indicated that he had never solicited a government agency contract but had been retained by several local governments all of whom had contacted him. Mr. Ulmer explained that he was presently representing the City of Fort Lauderdale in the Stranahan House condemnation, an \$8 million bond referendum with a retainer of \$250 an hour. He mentioned that he was also representing the City of Fort Lauderdale on a beach access, a case involving several different parcels. Mr. Ulmer commented that he had also represented Martin County as a consultant doing value engineering. He stated that he was hired at the beginning of a road project several miles in length to determine the issues and assist with redesigning the project to assist in minimizing the impact on adjoining property owners in order to reduce their acquisition costs. Mr. Ulmer indicated that he was currently representing Monroe County in a park condemnation in Marathon and was also representing St. Lucie County in connection with a port expansion, a 65 acre acquisition with an appraisal of approximately \$13 million. Mr. Ulmer mentioned that he was also representing St. Lucie County on the 25th Street Road project doing value engineering, as well as handling inverse and condemnation cases. He commented that he was also representing the City of West Palm Beach, a case he believed would be of interest to Council. Mr. Ulmer indicated that the condemner was the Florida Department of Transportation and related to the West Palm Beach International Airport fly-over connection from Interstate 95. He stated that the Florida Department of Transportation had condemned approximately eight acres from the City of West Palm Beach which was former roads and utility lines. Mr. Ulmer explained that he was representing the city in seeking compensation for acquisition of that property. He commented that this case would probably be appealed as there were distinct issues not only regarding the acquisition from one public entity to another, but also the issue as to what compensation was due. Mr. Ulmer indicated that the Florida Department of Transportation's argument against the City of West Palm Beach was that the Constitution stated that no private property should be acquired without full compensation.

With regard to legal issues being faced by the Town, Mr. Ulmer questioned if the acquisition was extra-jurisdictional and whether or not Council was seeking to condemn property outside the Town's municipal limits. He indicated that if that was the case, there would be a problem. Mr. Ulmer also inquired if the Town was seeking to acquire line connections or the entire plants which was a difference in the approach to these type of acquisitions as these facilities were considered trade fixtures and in case law were deemed personal property. Mr. Ulmer commented that there were all types of complex issues involved, the greatest of which was whether or not the property could be condemned and was there public necessity. He explained that the general rule was that if two governmental entities took the same stand, to allow one to condemn another created an endless vicious circle. Mr. Ulmer indicated that a superior government could condemn from a lesser government, that is, a state could condemn from a city, but that was not his understanding of this case and he was not quite sure that he understood enough of the case to give advice.

Mr. Ulmer stated that during his employment with Brigham, Moore, the firm represented General Development Corporation regarding condemnation of utilities which he worked on briefly. He advised that he did not have extensive responsibilities in the case, but he was familiar with the issues and had access to the files.

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Mr. Ulmer stated that he was an author on eminent domain matters and had written three chapters in Nichols on eminent domain which were the leading treatise in the country on eminent domain and he had spoken nationally on approximately eight seminars including the American Bar Association. He commented that he had recently implemented the entire curriculum, assigned speakers and topics, presented the keynote address as well as the summary and organized and moderated a day-long seminar on Condemnation in new Orleans for a National Trade Organization. Mr. Ulmer indicated that the trade organization was the Outdoor Advertising Association of America which was a billboard organization. He stated that he was involved in a majority of projects around the State and had handled condemnation cases in at least half of the counties in Florida. Mr. Ulmer revealed that he was presently active in condemnation cases in approximately 20 states including Florida, and although this appeared to be a vast amount of work but he was extremely organized which allowed him to do as much as he did. He commented that Council would be afforded his immediate attention indicating that his present focus was government work as there was a sudden crush due to the new law that was going into effect. The impact on the Town's case was not clear, however, Mr. Ulmer stated that one impact was that the Town would have to go through a pre-suit negotiation process that would be specifically outlined in the Statutes. He commented that the Statute towards provision was lengthy, containing information that could be misleading and if filing was not completed prior to July 1st, there could be a delay of approximately six months.

Mayor Venis commented that Mr. Ulmer had indicated that his fee was \$250 an hour and inquired as to the size of his staff, with Mr. Ulmer responding that he had a very good secretary. Mayor Venis inquired whether or not Mr. Ulmer felt that there would be a problem for him to undertake a case of this magnitude considering his present case load and his mayoral duties. Mr. Ulmer commented that it would be a problem for his city, but not for him as he routinely handled large volumes of work. He stated that there was a lull in property owner condemnation work which extended over a lengthy period of time. Mr. Ulmer explained that attorney's fees in property owner condemnation cases were ordered at the conclusion of the case with the property owners being in control as to when the trials were set. He commented that he had several trials set for the winter and was available until September.

Councilmember Cox inquired as to the largest condemnation case that Mr. Ulmer had undertaken. Mr. Ulmer responded that he was presently involved in a \$31 million acquisition where the South Florida Water Management District was condemning a 2,000 acre sod farm which was owned by his client. He indicated that he had also closed on a \$14 million two part settlement in December, the second part of which would be closing in two weeks. Mr. Ulmer advised that the government's initial offer was \$3 million. Councilmember Cox questioned in terms of generation of paper and convoluted and real involvement, how would that be dealt with. Mr. Ulmer indicated that he did not do too much work on a hourly basis, he represented property owners on a contingency rate that was the reason why being organized and efficient worked to his advantage. He commented that his nature was to get to the heart of the issue, deal with and solve the problem and move on to the next issue; he was not oriented to expending unnecessary time on a project. Mr. Ulmer indicated that he did not view things in the manner suggested by Council.

Councilmember Paul questioned the manner in which Mr. Ulmer became aware of this lawsuit. Mr. Ulmer responded that he had received a call from Mr. Kiar and Mitch

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Cesar. Mayor Venis commented that he had received Mr. Ulmer's name from his prior employers, Brigham, Moore who clearly indicated that they did not represent cities. He stated that Mr. Ulmer was highly recommended by them.

Joseph Serota, representing Weiss, Serota, Helfman, Pastoriza & Guedes, P.A., introduced himself and indicated that Mitchell Burnstein would speak later. He commented that he was appreciative of the opportunity to speak about an area of his firm's practice. Mr. Serota explained that there were 32 lawyers in his firm with two Offices in Broward County, and one in Miami-Dade County. He indicated that his firm's specialty was representing governments and private entities doing business with government, and believed that a law firm specializing in representing government had the expertise and experience to find issues and understand legal matters that was unique to this type of work. Mr. Serota commented that he believed Council was aware of his firm's active and extensive litigation department, along with the fact that his firm had handled different types of lawsuits for government including eminent domain matters. He made reference to an eminent domain matter that resulted in the taking of property used for the professional racetrack in the City of Homestead and indicated that his firm also recently represented the City of Aventura in a successful attempt to acquire land for a city hall and government complex. Mr. Serota indicated that his Office had extensive expertise in land use and real estate which he felt would be useful in the prosecution of the present eminent domain case. He commented that as part of his firm's commitment to provide the best possible legal services to its government clients, his firm always looked for outstanding legal talent, people who were in government and people who were interested in moving into the private sector. Mr. Serota indicated that approximately one year ago, his firm became aware of Mr. Burnstein, an Assistant Attorney General, and learned that he was interested in moving from government into the private sector. He commented that Mr. Burnstein had previously worked as a prosecutor for the Broward County State Attorney's Office and had spent approximately six and a half years working exclusively on eminent domain work with the Attorney General's Office. Mr. Serota indicated that if the firm of Weiss, Serota was chosen by Council, Mr. Burnstein would be the principal litigator, along with other attorneys in the firm with other areas of expertise. He commented that Council was aware that his firm had no conflicts of any kind with the Town, although his firm had an active land use practice, there was no practice before Council and his firm could commit that they would not have any private land use practice before Council.

In terms of cost, Mr. Serota stated that he considered eminent domain work to be a specialty of his office and normally charged at a higher hourly rate, however, due to a prior relationship with the Town as well as other reasons, a blended rate of \$175 would be charged for any attorney involved in the case.

Before he discussed his qualifications, Mr. Burnstein explained his deep roots in the community. Mr. Burnstein commented that he started in the State Attorney's Office and had attended Emory University in Atlanta before attending the University of Florida where he received his law degree. Mr. Burnstein commented that the first case he handled was a DUI, and three and a half years later his last case was a murder case. He indicated that following the verdict of that murder case, he commenced working with the Attorney General's Office where he was assigned to the eminent domain group. Mr. Burnstein explained that with the eminent domain group, the Attorney General's Office represented

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various agencies and various departments which was what set his firm apart. He stated that eminent domain was a specialty area of law and within that specialty area, there were sub-specialties and he believed his firm occupied one of the sub-specialty. Most eminent domain attorneys either represented land owners or governmental entities and his firm specialized in representing governmental entities. Mr. Burnstein indicated that he represented entities at the county, state and municipal levels. He stated that he had been responsible for single parcel acquisitions, as this case would likely be, and he had also been responsible for administering entire condemnation acquisition projects. Mr. Burnstein commented that he had been the manager of the North Key Largo Hammocks Acquisition Project in Monroe County on behalf of the Department of Environmental Protection and was responsible for the Rodenburger Acquisition Project on behalf of the South Florida Water Management District in Palm Beach County. He indicated that he had a varied background in representing condemners. Mr. Burnstein explained that eminent domain attorneys had a different perspective with a land owner attorney having one perspective and a governmental attorney having another. He commented that the most analogous situation was his former career as a prosecutor. Mr. Burnstein commented that he agreed that the attorneys present were a fine group but believed that what set his firm apart was the fact that they had the most expansive experience in representing all aspects of government and for a variety of public purpose, and he believed that he and Mr. Serota were up to the task. In response to a question posed by Councilmember Cox regarding the value of litigation that his firm had been involved with, Mr. Burnstein indicated that although he was not lead counsel, his firm had been involved with the largest eminent domain case in history of the State which occurred in the Panhandle called Top Sale Hill. He commented that he had been responsible for multi-million dollar litigations in all areas of the State and believed his firm was up to the task.

Vice-Mayor Weiner indicated that he had spoken with both Jamie Cole at the EMS Coalition meeting and Mr. Serota, who advised that his firm was submitting Mr. Burnstein's name for the position.

Councilmember Clark inquired if Mr. Burnstein's firm was successful in the case that he had mentioned. Mr. Burnstein commented that that case was during his employment with the Attorney General's Office and the Department of Environmental Protection was being represented.

Ivan Reich, representing Becker & Poliakoff, P.A., indicated that Alan Becker would be making the presentation. He indicated that he had spoken to Council and had made his thoughts known.

Mr. Becker indicated that when he began practicing law 31 years ago, his first job was with the Attorney General's Office where he worked on a case that had been in the courts for 15 years, partly involving condemnation against Coastal Petroleum. He commented that he read in the newspaper approximately two weeks ago that the Attorney General's Office was still in court with Coastal Petroleum involving different areas of the Everglades. Mr. Becker remarked that his thoughts were that the one thing Councilmembers did not want was for this litigation to linger through the length of their terms and be passed on to someone else. He commented that the idea was to have it completed and move one for the benefit of the residents.

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Mr. Becker indicated that Mr. Reich was a Davie resident who was acutely aware of the problems and was excited at the opportunity of participating in such a ground-breaking action. He commented that the lead attorney in the case would be his partner, Dan Rosenbaum, who could not be present as he was in New York involved in depositions, but had forwarded a letter to be presented to Council. Mr. Becker explained that his firm had substantial experience in the utility area and was the underwriter's counsel on both the City of Hollywood and the City of Miramar's water plant bond issues. He commented that the monetary aspect was not significant, but it was an indication that the firm had been involved with large projects involving municipal water. Mr. Becker explained that his firm was also involved in condemnation and was counsel to the Hillsborough County Expressway Authority and outside counsel on all matters concerning the Port of Tampa. He indicated that his firm was approved eminent domain counsel for Broward County and handled two cases for the County last year. Mr. Becker commented that his firm handled a tremendous number of cases for Palm Beach County and explained that the last package on which his firm was asked to make a proposal involved 100 cases. He commented that his firm was presently representing Palm Beach County and he had presented a letter to Council from the Palm Beach County Attorney attesting to the work being done by Mr. Rosenbaum. Mr. Becker indicated that based on the type of work that his firm did eminent domain on, except for isolated cases of probably a condominium association, most of their eminent domain work was done for governments. He commented that his firm was accustomed to representing governments in both eminent domain matters, as well as other types of litigation representation.

Concerning conflicts, Mr. Becker explained that with the exception of a lien matter sometime ago, his firm had never had any adverse contact with the Town. He commented that he did not believe that his firm had represented, nor did he anticipate representing, any developer seeking land use changes from the Town. Mr. Becker remarked that his firm was one with vast experience in all areas of litigation which it handled quite aggressively and were very aware of the need to be cost effective in dealing with governments as government had to be responsive and answer to someone else. He explained he never wanted to have a government client in a position of embarrassment with his firm's legal fees, length of service or the result. Mr. Becker reiterated that this was a very complex area and it would be naive to think it could be handled in a routine fashion or without the ability to apply extensive resources to it, should that become necessary.

Mr. Becker indicated that Vice-Mayor Weiner had pointed that this was a public meeting and he did not want to say things that would appear in a transcript. However, the Town was involved in a case that was not routine and his firm had done some research because they wanted to find out what was involved. Mr. Becker explained that it appeared realistic; however, as was pointed out, there were some areas of difficulty over which Council would have to prevail and this would require research. He commented that it was appropriate to discuss with Council the arguments on both sides in an executive session. Mr. Becker indicated that he could make arguments for both sides, not as an eminent domain attorney, but as someone who had read the research and Council would have to prepare an ordinance if it wanted to proceed. He explained that that had the best opportunity of being effective, then Council would have to proceed with the litigation in a timely fashion to void the impediments that had already been discussed. Mr. Becker commented that his firm would make the commitment to Council and would begin

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working on the case immediately. He indicated that he had spoken to Mr. Reich regarding the case who commented that if it was important to the firm, it was important to him.

Mr. Becker explained that Mr. Rosenbaum's rate was \$285 an hour. Mr. Reich indicated that he would charge a blended rate of \$165 an hour.

Councilmember Cox inquired if Mr. Becker had ever been involved in an eminent domain litigation with two government entities of equal standing. Mr. Becker responded that the sole case that he handled was 25 years ago and this involved the Department of Transportation and a government agency, but it was not of equal standing.

Councilmember Paul disclosed that her ex-husband was employed by Becker and Poliakoff as a comptroller and indicated that that would have no bearing on her choice based on the presentations.

Vice-Mayor Weiner commented that he had spoken with Mr. Reich regarding a police pension issue and he also informed Mr. Reich that he was interested in speaking with Mr. Rosenbaum at some point, whether his firm was selected or not.

Vice-Mayor Weiner expressed his appreciation for all the presentations provided by the different law firms which were varied in nature. He commented that he had stated on numerous occasions that he wanted the Town to do whatever was necessary to provide its own water system to residents and one of the ways to proceeding was to explore and, if possible, pursue eminent domain. Vice-Mayor Weiner indicated that to the extent that that could be accomplished, he would like Council to consider the presentations made and to decide on a firm to represent the Town. He explained that the only disadvantage to accomplishing that immediately, was that there was no representation as to the hourly rate of Ruden McClosky, and he would hate to make a decision if Council voted to hire Ruden McClosky and negotiate later even though he did not believe that the rate was an important issue.

Mr. Bolf stated that his firm had a management committee that authorized the reduction of normal hourly rate, but when dealing with governmental entities, it was fairly routine. He indicated that the reduction would be twenty percent which would be \$200 for him and \$160 for Mr. Bruschi.

Councilmember Cox commented that the City of Sunrise was famous for dumping a great deal of detailed information and creating chaos in an effort to impede the litigation. She questioned as a sole practitioner how Mr. Ulmer would deal with the issue. Mr. Ulmer explained that in an eminent domain case that was purely a legal issue which did not entail a lot of documentation, it depended on what the law said. It was a matter of who knew the law and who could argue the strongest and the best and who wrote the brief. He commented that there was enough lead time, at least 60 days from the time the suit was filed until appearance before a judge.

Mr. Ulmer explained that the reason he was able to handle a vast amount of work was due to fact that he worked with competent expert witnesses, something that was not discussed in any of the presentations as to who would hire the appraisers, planners and engineers. He indicated that in the cases he presently handled, he executed the negotiations, hired the witnesses, and put together the appraisals. Mr. Ulmer commented that he had hired competent experts who he had worked with extensively over the last 17 years and he had no associates because his experts were used for the legwork. He indicated that once the

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discovery process was completed and the records were received, documents that needed to be analyzed by an accountant were given to the accountant, appraisals to the appraiser and those that needed his analysis were completed by him.

Mayor Venis expressed his thanks to everyone for participating in the process. He commented that all the firms were of high quality and everyone made fine presentations.

Mayor Venis indicated that he was extremely impressed with the presentation of Becker Poliakoff and the fact that they represented Palm Beach and Broward Counties in eminent domain matters. He appreciated the firm's discounted blended rate of \$165 an hour. Mayor Venis commented that he believed that any firm selected would perform an excellent job for the Town. He indicated that he was impressed by Mr. Reich's presentation at the last Council meeting and he realized that he would be very aggressive.

Mayor Venis distributed the ranking sheets to Council and indicated that the firm with the lowest number would be selected.

Vice-Mayor Weiner inquired if it was safe to assume that whichever firm was selected would have to generate a report to Council by the end of May. This would let Council know if it was necessary to draft a resolution to proceed immediately or to delay and what needed to be done with regard to pre-suit negotiations under the new provision of Chapter 73.

Town Clerk Reinfeld read the rankings into the record which were as follows; Becker & Poliakoff - 8; Weiss, Serota - 12; Mr. Mark Ulmer - 13; and Ruden, McClosky - 17. Lowest ranking firm was selected.

Mayor Venis inquired if Mr. Becker would have a report to Council by the end of May. Mr. Becker expressed his thanks to Council for its confidence and for selecting his firm and indicated that they would do an aggressive job. He indicated that he would have the report ready by the end of May and commented that he was sure that he would have the occasion to have discussions with members of staff, as well as Council, while developing the issues.

2. Development Services Department Work Program

Mark Kutney, Development Services Director, explained that what he had done was to formulate a Gantt chart in addition to listing the projects. He indicated that this was not a true Gantt chart as a Gantt chart would list all the specific tasks relating to specific projects. Mr. Kutney explained that this was staff's effort to place a priority and a time estimate on these projects. He indicated that the Priority "A" were those that he felt were the most important projects, however, that did not indicate that Priority "B" and "C" projects were not important. Mr. Kutney explained that by naming a project a Priority "A", did not only indicate an importance, but meant that it was a project that needed to be worked. Obviously, to get some direction in terms of what was seen as priority projects, staff would be happy to undertake them but with the understanding that sometime other projects may suffer.

Mayor Venis commented that Mr. Kutney had explained that the Priority "A" projects were of the utmost importance and should be completed first. He inquired as to which were the oldest projects in the Department. Mr. Kutney responded that special residential was the oldest and the Intergovernmental Coordination Element (ICE) had also been around for quite sometime. The Flamingo Employment Center Comprehensive Plan Amendment had also been around for sometime and Mr. Kutney would be forwarding a

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memorandum to Council. Mr. Kutney indicated that the Town had been trying to negotiate a settlement agreement with the Department of Community Affairs (DCA) over the last year and had been unsuccessful. He stated that DCA was taking the position that the Town needed to act as catalyst in resolving the problem, which involved Broward County and several other municipalities. As a result of this, and the manner which the process worked under Florida Statutes, Mr. Kutney indicated that that would necessitate the Town engaging in administrative hearings with DCA either the week of June 12th or June 26th. He indicated that based upon the importance of the amendment, he and Mr. Middaugh had informally informed DCA that the Town did not intend to withdraw the amendment. Mr. Kutney indicated that he would be writing to Council to request its input before memorializing future administrative effort with DCA.

Mayor Venis indicated that he was aware that all the projects were important to the Development Services Department, the Town and the petitioners and he would like to see an outline for additional in-house professionals to assist. He indicated that from his observation, the Department could not catch-up, which meant that along with the present priorities, there were new projects with not enough staff. Mayor Venis indicated that he would like to see a proposal presented to Council for additional personnel to eliminate the present predicament. Mr. Kutney indicated that that was one factor that Mr. Middaugh had intended to address with Council and commented that he had had some extensive discussions with Mr. Middaugh regarding this problem. Mr. Kutney commented that there was one planner that was assigned to the majority of the projects mentioned. He indicated that he and Jeff Katims, Planning & Zoning Manager, had attempted to do as much as possible in support, but all the other planning staff had a function whether site plan, review, or variances which did not leave much room.

Councilmember Cox indicated that she thought this meeting was to give staff direction, however, she felt that some of the projects should be farmed out and consultants hired for the job. She indicated that the Special Residential Facilities project needed to be handled by an outside firm and did not believe that anyone on staff wanted to attempt to do it. Councilmember Cox commented that there was too much baggage associated with that project and a consultant should be hired. She inquired about the Flamingo Employment Center project and questioned whether or not it was a traffic issue with Mr. Kutney responding in the affirmative. Councilmember Cox inquired if a traffic planner or someone who performed traffic analysis could provide ammunition against DCA. Mr. Kutney responded that that was in place and indicated that Bill Laystrom would be intervening as he represented the property owner. He indicated that Mr. Laystrom had had Tinter and Associates provide information that was forwarded to DCA and they had not responded. Councilmember Cox inquired even if the Town provided the data that DCA needed, did DCA want the Town to widen I-595, with Mr. Kutney responding that DCA wanted the Town to come up with some type of special study or processing to resolve the problem. Mayor Venis commented that the State would not consider widening I-595 for a minimum of 10 years and DCA was stalling the development by stating that the traffic on I-595 was impeded. Mr. Kutney commented that DCA had indicated that the employment center land use was the type of land use they would like to see. He indicated that there were some other approaches such as trying to make the area a traffic and currency exception area, and another

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approach that might work would be an extension of the Regional Activity Center. Mr. Kutney indicated that that could not be accomplished before the administrative hearing although that was a solution that could be approached at a later date.

Councilmember Cox commented that she thought Council would be going through the issues individually in order to provide some direction for staff. Councilmember Paul responded that she wanted to make a recommendation. Mayor Venis indicated that he did not believe that Council was aware that there was such a large number of Priorities "A" and that was his reason for suggesting that professional consultants be hired, then Council would not have to spend the time prioritizing the items. He indicated that Council wanted to provide direction and guidance to Mr. Kutney to assist his department. Vice-Mayor Weiner inquired if Council had any questions regarding the items that were listed as Priority "A" as being the most important items, indicating that maybe Council could address the Priority "A" items and try to figure out the other items. He inquired whether Mr. Kutney had any suggestions. Mayor Venis indicated that item 4 on the list indicated 600 hours and item 16 showed 540 hour which was a tremendous amount of time. Mr. Kutney commented that the hours appeared to be large amounts but he had tried to be conservative in a number of cases. He indicated that the one project that he was not conservative on was the marine industry ordinance, a project that would require more hours than was estimated. Mr. Kutney explained what he tried to do was to account for situations where Council might want to review an ordinance and have staff go back which was generally what happened when the project was completed to a certain point. He commented that there were always additional tasks that needed to be completed.

Councilmember Cox inquired if Mr. Kutney would be comfortable going over the list and recommending to Council items that could be completed by staff versus items that could be done by a consultant. Mr. Kutney responded in the affirmative.

Councilmember Paul commented that she would be happy to sit with Mr. Kutney because she had moved the priorities around and as far as she was concerned item 2 could be eliminated or moved to the bottom of the list even though it was listed as Priority "B". She did not believe that the Town wanted to proceed at this point with bed and breakfast accommodations. Mayor Venis inquired how this came into being and why was so much time expended on it. Mr. Kutney commented that this was due to a private sector initiative along with two requests. He indicated that there may be some projects that Council felt were not as important now as they were initially.

Vice-Mayor Weiner commented that Councilmember Cox's suggestion was very intuitive in terms of Mr. Kutney perusing the list to determine which items should be turned-over to consultants, assuming that was Council's direction. He indicated that Mr. Kutney should feel free to include all the items he felt were necessary to be referred to consultants and not to hold onto items because he had already expended time on them. He explained that if there were items that Mr. Kutney felt were necessary to be referred that would allow him more time for other projects, he should do so.

Councilmember Paul reiterated that there were items, especially the Griffin Road Corridor, which were probably very important at this time, and she would be willing to sit down with Mr. Kutney to review the list. She indicated that each Councilmember could do the same and make comparisons as to what they felt were most important. Mayor Venis indicated that this information could then be presented to Council and a recommendation could be made.

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Vice-Mayor Weiner inquired if Mr. Kutney could assess the revenue that was generated versus the expenditure to see if all the funds had been spent. He inquired that if all the funds were exhausted for the purposes of the Development Services Department, would there be funds available to hire additional personnel to assist the system by easing the work load. Mr. Kutney responded affirmatively.

Councilmember Clark commented that Mr. Kutney should consider both Mayor Venis' and Councilmember Cox's suggestions in his recommendation. She remarked that she saw no reason why his recommendation could not include both suggestions.

5. ADJOURNMENT

There being no objections or further business, the meeting was adjourned at 7:21 p.m.

APPROVED _____

Mayor/Councilmember

Town Clerk